

UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF MISSISSIPPI,
WESTERN DIVISION

TERRANCE SIMPSON

PLAINTIFF

VERSUS

CIVIL ACTION NO. 5:07cv159-DCB-JMR

SOCIAL SECURITY COMMISSIONER

DEFENDANT

ORDER

This matter comes before the Court on the plaintiff's Motion for Temporary Restraining Order [**docket entry no. 10**]. Having carefully considered the Motion, applicable statutory and case law, and being otherwise fully advised as to the premises, the Court finds and orders as follows:

On August 15, 2007, Terrance Simpson filed a complaint with this Court against the Commissioner of the Social Security Administration¹. The plaintiff seeks a review of the Social Security Administration's ("SSA"'s) termination of his social security claim #898515. Simpson claims that the SSA's decision to terminate his claim due to his status as a fugitive felon² was in

¹ As of the date of this Order, the defendant has not been served with process. On November 27, 2007, a summons [docket entry no. 17] was issued by the clerk for service upon the Commissioner of the Social Security Administration, the United States Attorney General, and the United States Attorney's Office for the Southern District of Mississippi.

² The plaintiff states in his complaint that the issuance of an arrest warrant by the Wisconsin Department of Corrections for a probation violation on April 21, 2004, was the event which placed him under fugitive felon status. According to Simpson, the Wisconsin warrant was cancelled on April 29, 2005, after the

contravention of 20 C.F.R. § 416.1339(A) (1). In the way of relief, the plaintiff seeks to have his claim reopened and requests an order directing the SSA to pay him benefits from the month of his initial eligibility therefor.

On September 28, 2007, the plaintiff filed a Motion for Temporary Restraining Order [docket entry no. 10], wherein he seeks to enjoin the unserved defendant from further discovery. Simpson also requests that the defendant be ordered to pay him Social Security benefits from the month of his initial eligibility and to reopen his SSA file. The plaintiff avers that he will suffer irreparable injury, loss, and damage if his Motion is not granted before the defendant can be heard and before a hearing can be had on the preliminary injunction he (purportedly) seeks in his complaint. The plaintiff's Motion is now before the Court.

Federal Rule of Civil Procedure 65(b) states in relevant part:

A temporary restraining order may be granted without written or oral notice to the adverse party or that party's attorney only if (1) it clearly appears from specific facts shown by affidavit or by the verified complaint that immediate and irreparable injury, loss, or damage will result to the applicant before the adverse party or that party's attorney can be heard in opposition, and (2) the applicant's attorney certifies to the court in writing the efforts, if any, which have been made to give the notice and the reasons supporting the claim that notice should not be required.

The Court does not find the plaintiff's Motion to be well-taken.

Vicksburg Police Department apprehended him.

After considering the Motion and complaint, it does not clearly appear to the Court that the plaintiff will suffer immediate and irreparable injury, loss, or damage if a temporary restraining order does not issue. Accordingly,

IT IS HEREBY ORDERED that the plaintiff's Motion for Temporary Restraining Order [**docket entry no. 10**] is **DENIED**.

SO ORDERED, this the 13th day of December 2007.

s/ David Bramlette
UNITED STATES DISTRICT JUDGE